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Proposed Attorneys for Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

In re:  CLUB ONE CASINO, INC.,  Debtor-in-Possession.	Case No.: 15-14017-B-11  Chapter 11  DCN: KDG-1  Date: November 10, 2015 Time: 2:30 p.m. Place: United States Bankruptcy Court 2500 Tulare Street, Fifth Floor Department B, Courtroom 13 Fresno, California Judge: Honorable René Lastreto II
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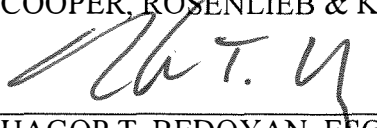
**EXHIBIT IN SUPPORT OF DEBTOR'S REPLY TO OPPOSITION OF  
 GEORGE SARANTOS AND ELAINE LONG O MOTION TO USE CASH  
 COLLATERAL AND GRANT ADEQUATE PROTECTION**

EXHIBIT	DESCRIPTION	PAGE(S)
A	<i>In re Clearwater Nursery, Inc.</i> , U.S. Bankruptcy Court, Central District of California, Case No.: 9:15-bk-10251-DS – Interim and Final Orders Approving the Stipulation	2 – 37

Date: November 6, 2015

KLEIN, DENATALE, GOLDNER,  
 COOPER, ROSENLIB & KIMBALL, LLP

By:

  
 HAGOP T. BEDOYAN, ESQ.,  
 Proposed Attorneys for Debtor-in-Possession

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Peter Susi, State Bar No. 62957 Jonathan Gura, State Bar No. 214240 Hollister & Brace, APC 1126 Santa Barbara Street Santa Barbara, CA 93101 Telephone: (805) 963-6711 Fax: (805) 965-0329 jgura@hbsb.com  <input type="checkbox"/> Individual appearing without an attorney <input checked="" type="checkbox"/> Attorney for: Clearwater Nursery, Inc.	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA -	
In re: CLEARWATER NURSERY, INC.         Debtor(s)	CASE NO.: 9:15-bk-10251-DS CHAPTER: 11  <b>NOTICE OF LODGMENT OF ORDER IN          BANKRUPTCY CASE RE: (title of motion<sup>1</sup>):</b> <u>EMERGENCY MOTION FOR ORDER ON A FINAL</u> <u>BASIS</u>

PLEASE TAKE NOTE that the order titled ORDER GRANTING DEBTOR'S EMERGENCY MOTION FOR ORDER ON A FINAL BASIS: (1) AUTHORIZING USE OF CASH COLLATERAL; (2) AUTHORIZING POSTPETITION FINANCING; AND (3) GRANTING SUPERPRIORITY EXPENSE CLAIMS was lodged on (date) 3/12/15 and is attached. This order relates to the motion which is docket number 9.

<sup>1</sup> Please abbreviate if title cannot fit into text field.

1 Peter Susi, State Bar No. 62957

(SPACE BELOW FOR FILING STAMP ONLY)

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3 **HOLLISTER & BRACE, A Professional Corporation**

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5 Facsimile: (805) 965-0329

6 Attorneys for Debtors and Debtors-in-Possession

7

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**UNITED STATES BANKRUPTCY COURT**

9

**CENTRAL DISTRICT OF CALIFORNIA, NORTHERN DIVISION**

10

11 In re

) BK No. 9:15-bk-10251-DS

12 CLEARWATER NURSERY, INC.,

) Chapter 11

13 Debtors.

) ORDER GRANTING DEBTOR'S  
) EMERGENCY MOTION FOR ORDER ON  
) A FINAL BASIS:

15

) (1) AUTHORIZING USE OF CASH  
) COLLATERAL;

16

17

) (2) AUTHORIZING POSTPETITION  
) FINANCING; AND

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) (3) GRANTING SUPERPRIORITY  
) EXPENSE CLAIMS

19

20

) DATE: March 5, 2015

) TIME: 10:30 am

21

) CTRM: 202

22

) 1415 State Street

) Santa Barbara, CA

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1 The Court, having considered the relief sought in the  
2 "Debtor's Emergency Motion For Order Authorizing Use of Cash  
3 Collateral; Authorizing Postpetition Financing; and Granting  
4 Superpriority Expense Claims" (the "Motion") filed by  
5 Clearwater Nursery, Inc. (the "Debtor"), at the emergency  
6 hearing on February 18, 2015, at 1:30 p.m. in Courtroom 202 of  
7 the above-titled Court, the Honorable Deborah J. Saltzman,  
8 United States Bankruptcy Judge presiding, and having granted  
9 the Motion on an interim basis, and finding that notice is  
10 adequate, and other good cause appearing therefor,

11 IT IS HEREBY ORDERED:

12 1. The Motion and the appended "*Stipulation For Interim*  
13 *Use of Cash Collateral and Grant of Adequate Protection*," (the  
14 "Stipulation") and the Debtor-in-Possession Financing Letter  
15 Agreement dated February 13, 2015 (the "Agreement") are  
16 approved in their entirety on a final basis.

17 2. The Budget, and otherwise known as the 13-week Cash  
18 Flow Projection, referenced in the Motion, the Stipulation, and  
19 the Agreement is replaced and superseded by the budget attached  
20 hereto as **Exhibit 1** to reflect the minor modifications  
21 announced in open court on March 5, 2015.

22 ///

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Exhibit

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Page

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1 3. All of the terms and conditions of the interim order  
2 approving the Motion entered in this case on February 19, 2015  
3 [ECF No. 38] continue in full force and effect.

4  
5 APPROVED AS TO FORM:

6 Lang, Richert & Patch

7   
8 \_\_\_\_\_  
9 Michael J. Gomez  
10 Attorneys for Secured Creditors,  
11 FARM CREDIT WEST, PCA, and  
12 FARM CREDIT WEST, FLCA

13  
14 ###  
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## WEEKLY CASH FORECAST

Ending	Forecast Week 1 2/20/2015	Forecast Week 2 2/27/2015	Forecast Week 3 3/6/2015	Forecast Week 4 3/13/2015	Forecast Week 5 3/20/2015	Forecast Week 6 3/27/2015	Forecast Week 7 4/3/2015	Forecast Week 8 4/10/2015	Forecast Week 9 4/17/2015	Forecast Week 10 4/24/2015	Forecast Week 11 5/1/2015	Forecast Week 12 5/8/2015	Forecast Week 13 5/15/2015
BEGINNING CASH BALANCE	\$ 0.01	\$ 62,154.15	\$ 54,462	\$ 5,990	\$ 120,316	\$ 4,780	\$ 76,198	\$ 21,536	\$ 4,266	\$ 6,331	\$ 150,438	\$ 144,670	\$ 273,350
CASH RECEIPTS FROM AIR	\$ 141,846	\$ 202,780	\$ 270,706	\$ 321,462	\$ 178,380	\$ 221,261	\$ 284,214	\$ 224,214	\$ 224,214	\$ 224,214	\$ 224,214	\$ 380,074	\$ 380,074

## PRODUCTION &amp; DISTRIBUTION EXPENSE

Production Labor													
- Insiders	\$ 77,553	\$ 68,156	\$ 68,156	\$ 68,156	\$ 9,000	\$ 11,428	\$ 11,428	\$ 11,428	\$ 11,428	\$ 11,428	\$ 11,428	\$ 11,428	\$ 11,428
- Non-Insider	\$ 6,354	\$ 6,354	\$ 6,354	\$ 6,354	\$ 6,354	\$ 6,354	\$ 6,354	\$ 6,354	\$ 6,354	\$ 6,354	\$ 6,354	\$ 6,354	\$ 6,354
Maintenance Labor	\$ 5,789	\$ 5,789	\$ 5,789	\$ 5,789	\$ 5,789	\$ 5,789	\$ 5,789	\$ 5,789	\$ 5,789	\$ 5,789	\$ 5,789	\$ 5,789	\$ 5,789
Warehouse/Shipping Labor	\$ 46,235	\$ 46,235	\$ 46,235	\$ 46,235	\$ 46,235	\$ 46,235	\$ 46,235	\$ 46,235	\$ 46,235	\$ 46,235	\$ 46,235	\$ 46,235	\$ 46,235
Harvesting/Packing Labor	\$ 17,785	\$ 17,785	\$ 17,785	\$ 17,785	\$ 17,785	\$ 17,785	\$ 17,785	\$ 17,785	\$ 17,785	\$ 17,785	\$ 17,785	\$ 17,785	\$ 17,785
Harvesting/Shipping (Produce)	\$ 4,202	\$ 4,202	\$ 4,202	\$ 4,202	\$ 4,202	\$ 4,202	\$ 4,202	\$ 4,202	\$ 4,202	\$ 4,202	\$ 4,202	\$ 4,202	\$ 4,202
Repairs & Maintenance	\$ 35,662	\$ 35,662	\$ 35,662	\$ 35,662	\$ 35,662	\$ 35,662	\$ 35,662	\$ 35,662	\$ 35,662	\$ 35,662	\$ 35,662	\$ 35,662	\$ 35,662
Seed & Plant Material	\$ 19,052	\$ 19,052	\$ 19,052	\$ 19,052	\$ 19,052	\$ 19,052	\$ 19,052	\$ 19,052	\$ 19,052	\$ 19,052	\$ 19,052	\$ 19,052	\$ 19,052
Production Material & Supply	\$ 8,859	\$ 8,859	\$ 8,859	\$ 8,859	\$ 8,859	\$ 8,859	\$ 8,859	\$ 8,859	\$ 8,859	\$ 8,859	\$ 8,859	\$ 8,859	\$ 8,859
Soil Materials	\$ 9,519	\$ 9,519	\$ 9,519	\$ 9,519	\$ 9,519	\$ 9,519	\$ 9,519	\$ 9,519	\$ 9,519	\$ 9,519	\$ 9,519	\$ 9,519	\$ 9,519
Chemicals & Fertilizers	\$ 29,803	\$ 29,803	\$ 29,803	\$ 29,803	\$ 29,803	\$ 29,803	\$ 29,803	\$ 29,803	\$ 29,803	\$ 29,803	\$ 29,803	\$ 29,803	\$ 29,803
Shipping Materials & Supplies	\$ 3,850	\$ 3,850	\$ 3,850	\$ 3,850	\$ 3,850	\$ 3,850	\$ 3,850	\$ 3,850	\$ 3,850	\$ 3,850	\$ 3,850	\$ 3,850	\$ 3,850
Upgrade material costs	\$ 894	\$ 894	\$ 894	\$ 894	\$ 894	\$ 894	\$ 894	\$ 894	\$ 894	\$ 894	\$ 894	\$ 894	\$ 894
Sales Tax	\$ 18,405	\$ 18,405	\$ 18,405	\$ 18,405	\$ 18,405	\$ 18,405	\$ 18,405	\$ 18,405	\$ 18,405	\$ 18,405	\$ 18,405	\$ 18,405	\$ 18,405
Freight-Out													
Rent	\$ 35,159	\$ 35,159	\$ 35,159	\$ 35,159	\$ 35,159	\$ 35,159	\$ 35,159	\$ 35,159	\$ 35,159	\$ 35,159	\$ 35,159	\$ 35,159	\$ 35,159
- Insider Jafroodi Properties LP	\$ 57,731	\$ 57,731	\$ 57,731	\$ 57,731	\$ 57,731	\$ 57,731	\$ 57,731	\$ 57,731	\$ 57,731	\$ 57,731	\$ 57,731	\$ 57,731	\$ 57,731
- Adequate Protection FCW	\$ 2,833	\$ 2,833	\$ 2,833	\$ 2,833	\$ 2,833	\$ 2,833	\$ 2,833	\$ 2,833	\$ 2,833	\$ 2,833	\$ 2,833	\$ 2,833	\$ 2,833
- Short-term land lease	\$ 934	\$ 934	\$ 934	\$ 934	\$ 934	\$ 934	\$ 934	\$ 934	\$ 934	\$ 934	\$ 934	\$ 934	\$ 934
Gas & Oil Vehicles													
Heating Gas													
Electricity	\$ 15,919	\$ 15,919	\$ 15,919	\$ 15,919	\$ 15,919	\$ 15,919	\$ 15,919	\$ 15,919	\$ 15,919	\$ 15,919	\$ 15,919	\$ 15,919	\$ 15,919
Payroll Taxes - Excl Admin & Sales & Log	\$ 6,378	\$ 6,378	\$ 6,378	\$ 6,378	\$ 6,378	\$ 6,378	\$ 6,378	\$ 6,378	\$ 6,378	\$ 6,378	\$ 6,378	\$ 6,378	\$ 6,378
Insurance - Includes Admin & Sales W Comp Not Logistics	\$ 19,580	\$ 19,580	\$ 19,580	\$ 19,580	\$ 19,580	\$ 19,580	\$ 19,580	\$ 19,580	\$ 19,580	\$ 19,580	\$ 19,580	\$ 19,580	\$ 19,580
Taxes & Licenses	\$ 90	\$ 90	\$ 90	\$ 90	\$ 90	\$ 90	\$ 90	\$ 90	\$ 90	\$ 90	\$ 90	\$ 90	\$ 90
TOTAL PROD & DIST EXPENSE	\$ 422,594	\$ 422,594	\$ 422,594	\$ 422,594	\$ 422,594	\$ 422,594	\$ 422,594	\$ 422,594	\$ 422,594	\$ 422,594	\$ 422,594	\$ 422,594	\$ 422,594

## SALES EXPENSE

Sales Salaries	\$ 8,637	\$ 8,637	\$ 8,637	\$ 8,637	\$ 8,637	\$ 8,637	\$ 8,637	\$ 8,637	\$ 8,637	\$ 8,637	\$ 8,637	\$ 8,637	\$ 8,637
Sales PR Taxes	\$ 959	\$ 959	\$ 959	\$ 959	\$ 959	\$ 959	\$ 959	\$ 959	\$ 959	\$ 959	\$ 959	\$ 959	\$ 959
Floral Shows	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250
Advertising & Promotions	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750
Commissions (Albertson's)													
Travel & Entertainment	\$ 12,586	\$ 12,586	\$ 12,586	\$ 12,586	\$ 12,586	\$ 12,586	\$ 12,586	\$ 12,586	\$ 12,586	\$ 12,586	\$ 12,586	\$ 12,586	\$ 12,586
Sales Travel	\$ 3,098	\$ 3,098	\$ 3,098	\$ 3,098	\$ 3,098	\$ 3,098	\$ 3,098	\$ 3,098	\$ 3,098	\$ 3,098	\$ 3,098	\$ 3,098	\$ 3,098
Corporate Travel	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500
Sales Meals & Entertainment	\$ 1,495	\$ 1,495	\$ 1,495	\$ 1,495	\$ 1,495	\$ 1,495	\$ 1,495	\$ 1,495	\$ 1,495	\$ 1,495	\$ 1,495	\$ 1,495	\$ 1,495
Corporate Meals	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200
	\$ 5,293	\$ 5,293	\$ 5,293	\$ 5,293	\$ 5,293	\$ 5,293	\$ 5,293	\$ 5,293	\$ 5,293	\$ 5,293	\$ 5,293	\$ 5,293	\$ 5,293

EXHIBIT 1

Exhibit

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## WEEKLY CASH FORECAST

Ending	Forecast Week 1 2/20/2015	Forecast Week 2 2/27/2015	Forecast Week 3 3/6/2015	Forecast Week 4 3/13/2015	Forecast Week 5 3/20/2015	Forecast Week 6 3/27/2015	Forecast Week 7 4/3/2015	Forecast Week 8 4/10/2015	Forecast Week 9 4/17/2015	Forecast Week 10 4/24/2015	Forecast Week 11 5/1/2015	Forecast Week 12 5/8/2015	Forecast Week 13 5/15/2015
TOTAL SALES EXPENSE	\$ 17,889	\$ 8,293	\$ 13,992	\$ 4,296	\$ 13,992	\$ 4,296	\$ 11,048	\$ 3,052	\$ 11,048	\$ 3,052	\$ 11,048	\$ 3,294	\$ 12,990
<b>GENERAL &amp; ADMINISTRATION EXPENSE</b>													
Administrative Salaries													
- Insiders			\$ 15,071		\$ 7,536		\$ 5,024		\$ 5,024		\$ 5,024		\$ 7,536
- Non-Insiders	\$ 3,053		\$ 3,053		\$ 3,053		\$ 2,035		\$ 2,035		\$ 2,035		\$ 3,053
Payroll Taxes - Admin	\$ 1,075		\$ 1,075		\$ 1,075		\$ 896		\$ 896		\$ 896		\$ 1,075
Estate Professional Fees							\$ 5,000		\$ 5,000		\$ 5,000		
US Trustee, Court & Related Costs													
401K Administration	\$ 2,000		\$ 10,000										
Met Life Quarterly							\$ 550						
Dues, Subscriptions & Education			\$ 415				\$ 53		\$ 53		\$ 53		\$ 101
Telephone	\$ 314		\$ 184	\$ 184	\$ 184	\$ 184	\$ 2,216			\$ 1,650		\$ 2,216	
Office Expenses	\$ 2,216		\$ 2,216										
Employee Programs	\$ 1,750		\$ 1,550				\$ 25					\$ 1,800	
Computer Expense	\$ 25		\$ 465									\$ 65	
Medical Expenses	\$ 3,801		\$ 4,341									\$ 4,566	
Bank Service Charges	\$ 60		\$ 60				\$ 60					\$ 60	
Interest Expense	\$ 700		\$ 700				\$ 700					\$ 950	
- Adequate Protection FCW	\$ 6,634		\$ 6,634				\$ 6,634					\$ 6,634	
- Post petition interest	\$ 17,581		\$ 17,581				\$ 17,581					\$ 17,581	
Royalty Expense			\$ 2,500				\$ 2,500					\$ 2,500	
						\$ 21,000							
TOTAL G&A EXPENSE	\$ 39,209	\$ -	\$ 65,844	\$ 184	\$ 11,847	\$ 21,184	\$ 43,274	\$ 53	\$ 8,007	\$ 5,504	\$ 13,007	\$ 36,473	\$ 11,764
TOTAL EXPENSE	\$ 479,592	\$ 210,472	\$ 419,178	\$ 207,137	\$ 293,896	\$ 149,842	\$ 338,875	\$ 241,484	\$ 222,149	\$ 80,107	\$ 229,982	\$ 251,394	\$ 245,008
CASH FROM OPERATIONS	(337,846)	(7,692)	(148,472)	114,325	(115,536)	71,419	(54,662)	(17,270)	2,065	144,107	(5,768)	128,680	165,066
BORROWED FUNDS	400,000		100,000										
ENDING CASH BALANCE	62,154	54,462	5,990	120,316	4,760	76,196	21,536	4,266	6,331	150,438	144,670	273,350	438,416
INVENTORY	6,332,779	6,332,779	6,332,779	6,332,779	6,332,779	6,332,779	6,332,779	6,332,779	6,332,779	6,332,779	6,332,779	6,332,779	6,332,779
OPEN ACCOUNTS RECEIVABLE	1,229,552	1,289,695	1,299,256	1,258,062	1,359,969	1,418,976	1,438,821	1,518,666	1,598,512	1,678,357	1,758,202	1,805,806	1,453,409

Exhibit

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**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

1126 Santa Barbara Street  
Santa Barbara, CA 93101

A true and correct copy of the foregoing document entitled (*specify*): NOTICE OF LODGMENT OF ORDER IN BANKRUPTCY CASE will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) March 12, 2015, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) March 12, 2015, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) March 12, 2015, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Ontrac Overnight Mail:

The Honorable Deborah Saltzman  
U.S. Bankruptcy Court  
255 E. Temple Street, Suite 1334  
Courtroom 1339  
Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 12, 2015

Tina Vanderhook

Date

Printed Name

Signature



SERVICE LIST  
Clearwater Nursery, Inc.  
Chapter 11 Case No.: 9:15-bk-10251-DS

SERVED ELECTRONICALLY

Brian D Fittipaldi [brian.fittipaldi@usdoj.gov](mailto:brian.fittipaldi@usdoj.gov)  
Michael J Gomez [mjg@lrplaw.net](mailto:mjg@lrplaw.net), [tara@lrplaw.net](mailto:tara@lrplaw.net)  
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Sandra McBeth [donna@mcbethlegal.com](mailto:donna@mcbethlegal.com)  
Ashley M Naporlee [Ashley@grantlawyers.com](mailto:Ashley@grantlawyers.com), [donna@grantlawyers.com](mailto:donna@grantlawyers.com)  
United States Trustee (ND) [ustpregion16.nd.ecf@usdoj.gov](mailto:ustpregion16.nd.ecf@usdoj.gov)

SERVED BY U.S. MAIL

SECURED CREDITOR

Farm Credit West  
Attn Chris Brumfield  
1478 Stone Point Dr Suite 450  
Roseville, CA 95661

TOP 20 UNSECURED CREDITORS

Custom Labor Services Inc  
125 W Mill Street  
Santa Maria, CA 93458

Sheppard West Inc  
Redfeather Ridge  
27850 Lady Slipper Loop  
Eugene, OR 97405

Ball Seed Co  
Attn Kate Walsh  
622 Town Road  
West Chicago, IL 60185

American Horticultural Supply Inc  
2901 Sturgis Road  
Oxnard, CA 93030

Aris Horticulture Inc  
PO Box 76096  
Cleveland, OH 44101-4755

Jafrودي Properties LP  
2901 Surgis Road  
Oxnard, CA 93030

The Arbory Ltd  
4079 Thirteenth Street  
Jordan Station  
Ontario L0R 1S0 CANADA

Sun Gro Horticulture  
36212 Treasury Center  
Chicago, IL 60694-6200

ASA Flower Bulbs  
Hameyasdim 1st  
Moshav Bitzaron  
60946 ISRAEL

Gloeckner and Co Inc  
600 Mamaroneck Ave  
Harrison, NY 10528

Robert Mann Packaging Inc  
Department 39000  
PO Box 39000  
San Francisco, CA 94139-4379

DecoWraps  
8900 NW 33rd St Suite 100  
Doral, FL 33172

Helena Chemical Company  
PO Box 742558  
Los Angeles, CA 90074-2558

CJ Ruigrok & Sons  
Zilkerbinnenweg 58  
2191 AD De Silk HOLLAND

Southern California Gas Co  
PO Box C

Monterey Park, CA 91756

AGRx  
751 South Rose Avenue  
Oxnard, CA 93030

4 Elements Inc  
6665 Cote De Liesse  
Montreal, Quebec  
CANADA H4T 1Z5

Pindstrup Mosebrug A/S  
Attn Kim Groberski  
1200 Arlington Hts Rd Suite 410  
Itasca, IL 60143

Griffin Greenhouse Supplies  
PO Box 842937  
Boston, MA 02884-2937

Seaside Packaging  
1450 E Wooly Road  
Oxnard, CA 93030

INTERESTED PARTIES

(In the Matter of *Ramirez v. Clearwater Nursery, Inc., et al*; SLO County Case No. CV 110083)

Allen K Hutkin, Esq.  
Hutkin Law Firm  
1229 Higuera St 1<sup>st</sup> Floor  
San Luis Obispo, CA 93401

Kathryn Eppright, Esq.  
Andre Morris & Buttery  
1102 Laurel Lane  
San Luis Obispo, CA 93401

DEBTOR

Clearwater Nursery Inc  
John E. Djafroodi President  
2901 Sturgis Road  
Oxnard, CA 93030

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Peter Susi, State Bar No. 62957 Jonathan Gura, State Bar No. 214240 Hollister & Brace, APC 1126 Santa Barbara Street Santa Barbara, CA 93101 Phone: (805) 963-6711 Fax: (805) 965-0329 jgura@hbsb.com  <input type="checkbox"/> Individual appearing without an attorney <input checked="" type="checkbox"/> Attorney for: CLEARWATER NURSERY, INC.	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA -	
In re: CLEARWATER NURSERY, INC.         Debtor(s)	CASE NO.: 9:15-bk-10251-DS CHAPTER: 11  <b>NOTICE OF LODGMENT OF ORDER IN          BANKRUPTCY CASE RE: (title of motion<sup>1</sup>):</b> <u>DEBTOR'S EMERGENCY MOTION FOR ORDER AUTHORIZING</u> <u>USE OF CASH COLLATERAL; AUTHORIZING POSTPETITION</u>

PLEASE TAKE NOTE that the order titled ORDER GRANTING DEBTOR'S EMERGENCY MOTION FOR ORDER: (1) AUTHORIZING USE OF CASH COLLATERAL; (2) AUTHORIZING POSTPETITION FINANCING; AND (3) GRANTING SUPERPRIORITY EXPENSE CLAIMS

was lodged on (date) 2/18/15 and is attached. This order relates to the motion which is docket number 9.

<sup>1</sup> Please abbreviate if title cannot fit into text field.

**HOLLISTER & BRACE**

(SPACE BELOW FOR FILING STAMP ONLY)

A Professional Corporation

ATTORNEYS AT LAW

1126 SANTA BARBARA STREET

SANTA BARBARA, CALIFORNIA 93101

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Jonathan G. Gura, Bar No. 214240

Peter Susi, Bar No. 62957

Attorneys for Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT****CENTRAL DISTRICT OF CALIFORNIA, NORTHERN DIVISION**

In re

CLEARWATER NURSERY INC.,

Debtor.

BK No. 9:15-bk-10251-DS

Chapter 11

ORDER GRANTING DEBTOR'S  
EMERGENCY MOTION FOR ORDER:  
(1) AUTHORIZING USE OF CASH  
COLLATERAL; (2) AUTHORIZING  
POSTPETITION FINANCING; AND  
(3) GRANTING SUPERPRIORITY  
EXPENSE CLAIMS

Date: February 18, 2015

Time: 1:30 p.m.

Place: Courtroom 202  
1415 State Street  
Santa Barbara, CA

1 The "Debtor's Emergency Motion For Order Authorizing Use  
2 of Cash Collateral; Authorizing Postpetition Financing; and  
3 Granting Superpriority Expense Claims" (the "Motion") filed by  
4 Clearwater Nursery, Inc. (the "Debtor") came for hearing on  
5 shortened time at the request of the Debtor on February 18,  
6 2015, at 1:30 p.m. in Courtroom 202 of the above-titled Court,  
7 the Honorable Deborah J. Saltzman, United States Bankruptcy  
8 Judge presiding. Appearances were as set forth in the record  
9 for the hearing.

10 Based upon the Motion and the supporting papers, the files  
11 and records of this case, and the arguments and statements of  
12 counsel at the time of the hearing,

13 THE COURT FINDS AS FOLLOWS:

14 A. Notice of the Motion was appropriate pursuant to the  
15 Order Shortening Time [Docket No. 26], Local Bankruptcy Rule  
16 9075-1, and Federal Rules of Bankruptcy Procedure 2002 and  
17 4001(d);

18 B. The Debtor has established the business and  
19 operational needs of the estate for use of the cash collateral  
20 of and financing from Farm Credit West, FLCA and Farm Credit  
21 West, PCA ("FCW") in the ordinary and necessary course of the  
22 estate's business on a weekly basis, including, without  
23 limitation, to prevent the immediate and irreparable harm to  
24 the estate pending a final hearing on the Motion;

25 C. The provisions of the "Stipulation For Interim Use of  
26 Cash Collateral and Grant of Adequate Protection," (the  
27 "Stipulation"), the Debtor-in-Possession Financing Letter  
28

1 Agreement dated February 13, 2015 (the "Agreement"), and the  
2 Budget appended to the Motion are reasonable;

3 D. The Debtor has established the prima facie need of  
4 FCW for and rights to the grant of adequate protection for the  
5 Debtor's use of FCW's cash collateral for post-petition  
6 operations during the period of time covered by the Budget; and

7 E. Other good cause supports granting the Motion.

8 **WHEREFORE, THE COURT ORDERS AS FOLLOWS:**

9 1. The Motion is granted.

10 2. The Stipulation, the Agreement, and the Debtor's use  
11 of FCW's cash collateral pursuant to the terms of the  
12 Stipulation and the Agreement are approved in all respects as  
13 set forth in the Agreement and the Stipulation. All of the  
14 terms, covenants, conditions, protections, agreements,  
15 reaffirmations, releases, and grants set forth in the  
16 Stipulation and the Agreement are ordered as set forth therein,  
17 including, without limitation, the replacement liens, the  
18 super-priority liens, and the super-priority expenses of  
19 administration pursuant to 11 U.S.C. §§ 105, 361, 362, 363,  
20 364(c)(1), 364(d), 503(b), and 507(b).

21 3. The Debtor shall operate in conformity with the  
22 Budget and the Eligible Collateral calculation pursuant to the  
23 terms of the Stipulation and the Financing Agreement.

24 4. FCW is entitled to the grants of adequate protection  
25 as set forth in the Stipulation and the protections,  
26 agreements, reaffirmations, releases, and grants set forth in  
27 the Agreement.

28

###



**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

1126 Santa Barbara Street  
Santa Barbara, CA 93101

A true and correct copy of the foregoing document entitled (*specify*): NOTICE OF LODGMENT OF ORDER IN BANKRUPTCY CASE will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) February 18, 2015, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) February 18, 2015, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) February 18, 2015, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

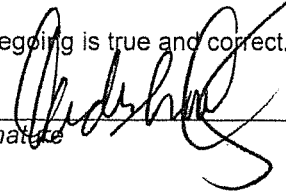
Via Ontrac Overnight Mail:

The Honorable Deborah Saltzman  
U.S. Bankruptcy Court  
255 E. Temple Street, Suite 1334  
Courtroom 1339  
Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 18, 2015 Tina Vanderhook  
Date Printed Name

Signature 

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

SERVICE LIST  
Clearwater Nursery, Inc.  
Chapter 11 Case No.: 9:15-bk-10251-DS

**SERVED ELECTRONICALLY**

Brian D Fittipaldi [brian.fittipaldi@usdoj.gov](mailto:brian.fittipaldi@usdoj.gov)  
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Ashley M Naporlee [Ashley@grantlawyers.com](mailto:Ashley@grantlawyers.com), [donna@grantlawyers.com](mailto:donna@grantlawyers.com)  
United States Trustee (ND) [ustpreion16.nd.ecf@usdoj.gov](mailto:ustpreion16.nd.ecf@usdoj.gov)

**SERVED BY U.S. MAIL**

**SECURED CREDITORS**

Farm Credit West  
Attn Chris Brumfield  
1478 Stone Point Dr Suite 450  
Roseville, CA 95661

**TOP 20 UNSECURED CREDITORS**

Custom Labor Services Inc  
125 W Mill Street  
Santa Maria, CA 93458

Sheppard West Inc  
Redfeather Ridge  
27850 Lady Slipper Loop  
Eugene, OR 97405

Ball Seed Co  
Attn Kate Walsh  
622 Town Road  
West Chicago, IL 60185

American Horticultural Supply Inc  
2901 Sturgis Road  
Oxnard, CA 93030

Aris Horticulture Inc  
PO Box 76096  
Cleveland, OH 44101-4755

Jafrودي Properties LP  
2901 Surgis Road  
Oxnard, CA 93030

The Arbory Ltd  
4079 Thirteenth Street  
Jordan Station  
Ontario L0R 1S0 CANADA

Sun Gro Horticulture  
36212 Treasury Center  
Chicago, IL 60694-6200

ASA Flower Bulbs  
Hameyasdim 1st  
Moshav Bitzaron  
60946 ISRAEL

Gloeckner and Co Inc  
600 Mamaroneck Ave  
Harrison, NY 10528

Robert Mann Packaging Inc  
Department 39000  
PO Box 39000  
San Francisco, CA 94139-4379

DecoWraps  
8900 NW 33rd St Suite 100  
Doral, FL 33172

Helena Chemical Company  
PO Box 742558  
Los Angeles, CA 90074-2558

CJ Ruigrok & Sons  
Zilkerbinnenweg 58  
2191 AD De Silk HOLLAND

Southern California Gas Co  
PO Box C  
Monterey Park, CA 91756

AGRx  
751 South Rose Avenue  
Oxnard, CA 93030

4 Elements Inc  
6665 Cote De Liesse  
Montreal, Quebec  
CANADA H4T 1Z5

Pindstrup Mosebrug A/S  
Attn Kim Groberski  
1200 Arlington Hts Rd Suite 410  
Itasca, IL 60143

Griffin Greenhouse Supplies  
PO Box 842937  
Boston, MA 02884-2937

Seaside Packaging  
1450 E Wooly Road  
Oxnard, CA 93030

INTERESTED PARTIES

(In the Matter of *Ramirez v. Clearwater Nursery, Inc., et al*; SLO County Case No. CV 110083)  
Allen K Hutkin, Esq.  
Hutkin Law Firm  
1229 Higuera St 1<sup>st</sup> Floor  
San Luis Obispo, CA 93401

Kathryn Eppright, Esq.  
Andre Morris & Buttery  
1102 Laurel Lane  
San Luis Obispo, CA 93401

DEBTOR

Clearwater Nursery Inc  
John E. Djafroodi President  
2901 Sturgis Road  
Oxnard, CA 93030

17

1 René Lastreto II, #100993  
2 [rl2@lrplaw.net](mailto:rl2@lrplaw.net)  
3 Michael J. Gomez, #251571  
4 [mjg@lrplaw.net](mailto:mjg@lrplaw.net)  
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7 Fresno, California 93755-0012  
8 (559) 228-6700 Phone  
9 (559) 228-6727 Fax

6 Attorneys for Secured Creditors  
7 FARM CREDIT WEST, FLCA and  
8 FARM CREDIT WEST, PCA

9 UNITED STATES BANKRUPTCY COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 NORTHERN DIVISION

12 In re  
13 Clearwater Nursery, Inc.,  
14 Debtor.

Case No. bk-15-10251-DS  
Chapter 11

STIPULATION FOR INTERIM USE OF  
CASH COLLATERAL AND GRANT OF  
ADEQUATE PROTECTION

19 This Stipulation is made by and between Clearwater Nursery, Inc., Debtor and Debtor-in-  
20 Possession (the "Debtor"), on the one hand, and Secured Creditors Farm Credit West, FLCA, and  
21 Farm Credit West, PCA (together with FLCA, "Lender"), on the other hand. The Debtor and  
22 Lender hereby stipulate and agree as follows:

23 RECITALS

24 a. Prior to the February 11, 2015 (the "Petition Date") in the above-captioned case,  
25 Lender made several loans to the Debtor (the "Loans"). Lender contends the Loans are secured by  
26 substantially all of the Debtor's personal property collateral. Pursuant to, *inter alia*, certain notes,  
27 security agreements, and other agreements executed by the Debtor (collectively, the "Loan  
28

Stipulation Authorizing Use of Cash Collateral  
Between Debtor and Secured Creditors

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EXHIBIT A

Exhibit

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Documents”),<sup>1</sup> Lender contends it holds valid, enforceable, and perfected first priority liens and

<sup>1</sup>The Loan Documents consist of the following:

1. Promissory Note and Loan Agreement dated June 2, 1999 between 1980 Jafroodi Family Trust U/D/T dated November 13, 1980, as amended (“Jafroodi Trust”), Mahmood Jafroodi, Azar Jafroodi, and Central Coast Federal Land Bank Association, FLCA;

2. Continuing Guaranty – Recourse dated June 2, 1999 between Debtor and Central Coast Federal Land Bank Association, FLCA guaranteeing the obligations of the Jafroodi Trust, Mahmood Jafroodi, and Azar Jafroodi to Central Coast Federal Land Bank Association, FLCA;

3. Security Agreement dated June 2, 1999 by Jafroodi Trust, Mahmood Jafroodi, Azar Jafroodi, and Debtor in favor of Central Coast Federal Land Bank Association, FLCA;

4. Promissory Note and Loan Agreement dated December 16, 1999 between Jafroodi Trust, Mahmood Jafroodi, Azar Jafroodi, and Central Coast Federal Land Bank Association, FLCA;

5. Continuing Guaranty – Recourse dated December 16, 1999 between Debtor and Central Coast Federal Land Bank Association, FLCA guaranteeing the obligations of the Jafroodi Trust, Mahmood Jafroodi, and Azar Jafroodi to Central Coast Federal Land Bank Association, FLCA;

6. Supplemental Security Agreement dated December 16, 1999 by Jafroodi Trust, Mahmood Jafroodi, Azar Jafroodi, and Debtor in favor of Central Coast Federal Land Bank Association, FLCA;

7. Promissory Note and Loan Agreement dated July 13, 2000 between Jafroodi Trust, Mahmood Jafroodi, Azar Jafroodi, and Central Coast Federal Land Bank Association, FLCA;

8. Security Agreement dated July 13, 2000 by Jafroodi Trust, Mahmood Jafroodi, Azar Jafroodi, and Debtor in favor of Central Coast Federal Land Bank Association, FLCA;

9. Promissory Note and Loan Agreement dated April 26, 2001 between Jafroodi Trust, Mahmood Jafroodi, Azar Jafroodi, and Central Coast Federal Land Bank Association, FLCA;

10. Security Agreement dated April 26, 2001 by Jafroodi Trust, Mahmood Jafroodi, Azar Jafroodi, and Debtor in favor of Central Coast Federal Land Bank Association, FLCA;

11. Promissory Note and Loan Agreement dated July 1, 2002 between Jafroodi Trust, Mahmood Jafroodi, Azar Jafroodi, and Farm Credit West, FLCA;

12. Continuing Guaranty – Recourse dated July 1 2002 between Debtor and Farm Credit West, FLCA, guaranteeing the obligations of the Jafroodi Trust, Mahmood Jafroodi, and Azar Jafroodi to Farm Credit West, FLCA;

13. Security Agreement dated July 1, 2002 by Jafroodi Trust, Mahmood Jafroodi, Azar Jafroodi, and Debtor in favor of Farm Credit West, FLCA;

14. Continuing Guaranty – Recourse dated August 9, 2004 between Debtor and Farm Credit West, FLCA, guaranteeing the obligations of the Jafroodi Trust, Mahmood Jafroodi, and Azar Jafroodi to Farm Credit West, FLCA;

15. Security Agreement dated August 9, 2004 by Debtor, Jafroodi Trust, Mahmood Jafroodi, and Azar Jafroodi in favor of Farm Credit West, FLCA;

Stipulation Authorizing Use of Cash Collateral  
Between Debtor and Secured Creditors

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Exhibit

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1 security interests in substantially all of the Debtor's assets including, without limitation, (a)  
2 inventory and accounts, (b) equipment and fixtures, (c) documents of title, (d) rights to payment;  
3 (e) goods; (f) farm products; (g) investment property; (i) vehicles; (j) general intangibles, (k) cash  
4 collateral within the meaning of section 363(a) of the Bankruptcy Code ("Cash Collateral"); and  
5 (l) any proceeds of the foregoing, as well as other collateral (collectively, the "Prepetition  
6 \_\_\_\_\_

7 16. Security Agreement dated August 24, 2004 by Debtor, 906 Eucalyptus Nursery, LLC  
8 ("Eucalyptus"), and American Horticultural Supply, Inc. in favor of Farm Credit West, PCA;

9 17. Master Loan Agreement dated January 25, 2005 between Debtor, Eucalyptus, and Farm Credit  
West, PCA;

10 18. Promissory Note and Supplement to Master Loan Agreement dated January 25, 2005 by Debtor  
11 and Eucalyptus in favor of Farm Credit West, PCA;

12 19. Security Agreement dated March 1, 2006 by Debtor, Eucalyptus, and American Horticultural  
Supply, Inc., and Jafroodi Properties, L.P. in favor of Farm Credit West, PCA;

13 20. Master Loan Agreement dated March 1, 2006 between Eucalyptus, Jafroodi Trust, Jafroodi  
14 Properties, L.P., and Farm Credit West, PCA;

15 21. Continuing Guaranty – Recourse dated March 1, 2006 between Debtor and Farm Credit West,  
PCA, guaranteeing the obligations of Jafroodi Properties, L.P. to Farm Credit West, PCA;

16 22. Promissory Note and Supplement to Master Loan Agreement dated September 10, 2008 by  
17 Eucalyptus, Jafroodi Trust, and Jafroodi Properties, L.P. in favor of Farm Credit West, PCA;

18 23. Master Loan Agreement dated March 20, 2009 between Eucalyptus, Jafroodi Trust, Jafroodi  
Properties, L.P., and Farm Credit West, PCA;

19 24. Promissory Note and Supplement to Master Loan Agreement dated March 20, 2009 by  
20 Eucalyptus, Jafroodi Trust, and Jafroodi Properties, L.P. in favor of Farm Credit West, PCA;

21 25. Promissory Note and Supplement to Master Loan Agreement dated April 17, 2009 by Eucalyptus,  
Jafroodi Trust, and Jafroodi Properties, L.P. in favor of Farm Credit West, PCA;

22 26. Master Loan Agreement dated November 23, 2009 between Debtor, Eucalyptus, Jafroodi Trust,  
23 and Farm Credit West, PCA;

24 27. Supplemental Security Agreement dated February 14, 2011 by Debtor, Eucalyptus, American  
Horticultural Supply, Inc., and Jafroodi Properties, L.P. in favor of Farm Credit West, PCA;

25 28. Promissory Note and Supplement to Master Loan Agreement dated August 9, 2012 by Debtor,  
26 Eucalyptus, and Jafroodi Trust in favor of Farm Credit West, PCA;

27 29. Loan Restructure and Workout Agreement dated April 16, 2009 and the eight amendments  
thereto; and

28 30. First Amended and Restated Loan Restructure and Workout Agreement dated January 2, 2014.

Stipulation Authorizing Use of Cash Collateral  
Between Debtor and Secured Creditors

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Exhibit

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1 Collateral”).

2 b. As of the Petition Date, in accordance with the terms of the Loan Documents, Lender  
3 contends the Debtor is indebted to Lender in the approximate amount of \$14,949,448.56 plus  
4 accrued unpaid interest, charges, and other fees, including attorneys’ fees and costs, chargeable  
5 under the Loan Documents.

6 c. The Debtor desires to continue operations, collect Cash Collateral, and utilize the  
7 Cash Collateral to pay the ordinary and necessary expenses related to the preservation and  
8 maintenance of its operations. Lender consents to Debtor’s use of its Cash Collateral on the terms  
9 and conditions set forth herein.

10 d. This Stipulation shall be effective nunc pro tunc as of the Petition Date. Except as  
11 otherwise provided herein, the terms of this Stipulation shall be valid and binding upon the Debtor,  
12 all successors in interest to the Debtor, all creditors of the Debtor, any statutory Committee  
13 appointed in this case and all other parties in interest from and after the Petition Date, including any  
14 trustees appointed under Chapter 7 or Chapter 11 of the Bankruptcy Code, or any examiner  
15 appointed with or without expanded powers.

16 NOW, THEREFORE, the Debtor and Lender hereby agree as follows:

17 STIPULATION

18 1. This Stipulation shall be in effect until the earlier of May 15, 2015 (subject to  
19 extensions as agreed upon in writing between Lender and the Debtor pursuant to paragraph 32  
20 below) (the “Interim Period”), or the Termination Date (as “Termination Date” is defined below in  
21 paragraph 29), except as provided in paragraphs 24 through 26.

22 2. The Debtor shall collect all Cash Collateral generated by the Prepetition Collateral  
23 and Postpetition Collateral (as “Postpetition Collateral” is defined below in paragraph 4). The Cash  
24 Collateral shall be deposited into the Court mandated debtor-in-possession operating account (the  
25 “General Account”). The Debtor shall at all times keep a record of all credits and debits to the  
26 General Account and be able to account for all funds in the General Account.

27 ///

28 ///

Stipulation Authorizing Use of Cash Collateral  
Between Debtor and Secured Creditors

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Exhibit

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Budget

3. The Debtor may use Cash Collateral collected from the Prepetition Collateral and Postpetition Collateral solely to pay expenses incurred in the ordinary course of its business in amounts not to exceed the line item expenses provided in the monthly budgets for the Petition Date through May 15, 2015, attached hereto as Exhibit "1" (the "Budget," and each expense therein, and "Approved Expense"). The Debtor may exceed the budgeted amount for any line item weekly expense by up to 15% of the amount budgeted for that weekly expense only, provided however that the aggregate expenses in any given week period shall not exceed 10% more than the total budgeted weekly amount. Additionally, the Debtor's actual individual line items for revenues for each weekly period of the Budget shall not be less than 85% of the projected line item of revenue and 90% of the line item for aggregate revenues for such period as set forth in the Budget. With Lender's written agreement, the budgeted amount, either by line item, or total, per one week period, may be exceeded without the Court's approval. The limitation on line items for payment of expenses does not apply to payment of the fees of the United States Trustee. The Debtor may use \$10,000.00 of Cash Collateral collected from the Prepetition Collateral and Postpetition Collateral to pay the administrative expense of the Debtor's counsel. The Debtor may also use the Prepetition Collateral used to fund the retainer for the Debtor's counsel to pay the administrative expense of the Debtor's counsel. No other use of Cash Collateral collected from either the Prepetition Collateral or the Postpetition Collateral to pay the administrative expenses of professional fees is authorized.

Adequate Protection

4. As adequate protection for the Debtor's expenditures of Cash Collateral, the Debtor grants Lender valid, enforceable, and perfected replacement liens on, and security interests in, any and all of the Debtor's rights, title, and interest in and to all of its accounts, rights to payment, inventory, goods, farm products, accounts receivable, general intangibles, equipment, fixtures, investment property, vehicles, any substitutions or accessions to the foregoing, and any proceeds thereof, including, without limitation all cash on hand, all cash accumulated on a postpetition basis, any other Cash Collateral, and any insurance proceeds or replacements of the foregoing (excluding,

1 however, any claims or causes of action held by Debtor under sections 502(d), 544, 545, 547, 548,  
2 549, 550, and 553 of the United States Bankruptcy Code ("Avoidance Action Assets") effective  
3 as of the Petition Date, in the same validity, priority, and scope as Lender's liens as they existed  
4 against the Debtor prior to the Petition Date (the "Postpetition Collateral"), which shall not be  
5 abridged or modified pursuant to sections 105 or 552 of the Bankruptcy Code or otherwise. The  
6 liens and security interests granted to Lender under this paragraph shall not be subject to any lien  
7 or security interest that is avoided and preserved for the benefit of the estate pursuant to section 551  
8 of the Bankruptcy Code.

9 5. In addition to the liens and security interests granted hereunder, Lender's claims to  
10 the Postpetition Collateral shall have priority, pursuant to the provisions of the Bankruptcy Code,  
11 over all administrative and priority expenses incurred in the reorganization case, including, without  
12 limitation, expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy  
13 Code, and shall at all times be senior to the rights of the Debtor and its creditors, or in the  
14 successors-in-interest of the Debtor or its creditors, including without limitation any statutory  
15 committee, and any trustee or examiner appointed in the reorganization case.

16 6. As additional adequate protection, the Debtor shall pay Farm Credit West, PCA  
17 adequate protection payments consisting of monthly, interest-only payments at the non-default rate  
18 of interest on Loan Nos. 3644715-201 and 3645010-101, estimated at \$17,583.55 (based on interest  
19 accrual of \$578.09 per diem); and additional monthly adequate protection payments totaling  
20 \$57,731.28 to Farm Credit West, FLCA, consisting of regular monthly principal and interest  
21 payments on Loan Nos. 0163155-101, 0163740-101, 0164380-101, 3634531-101, and 3643840-101  
22 (the "Additional Adequate Protection"). The Debtor will note in its books and records each  
23 Additional Adequate Protection payment as a portion of the rent paid to Jafroodi Properties, L.P.  
24 The first adequate protection payment shall be due by no later than February 20, 2015. Each  
25 successive adequate protection payment shall be paid by the first of each month, commencing on  
26 March 1, 2015. Debtor authorizes Farm Credit West, PCA to deduct the adequate protection  
27 payments via ACH transfer from its debtor-in-possession bank accounts on the first of the month  
28 or the next business day should the first of the month be a legal holiday.

1 7. Furthermore, as adequate protection, the Debtor shall pay Farm Credit West, PCA  
2 any patronage payments or other proceeds issued to it on account of Farm Credit West, ACA stock  
3 to be applied to Loan Nos. 3644715-201 and 3645010-101 in any manner, and authorizes Farm  
4 Credit West, PCA to collect such payments or proceeds directly from Farm Credit West, ACA.

5 8. As additional adequate protection, Debtor covenants that it shall maintain at all times  
6 accounts receivable that are less than 90 days old in excess of \$900,000, excluding any inter-  
7 company accounts receivable owed by 906 Eucalyptus, LLC, Jafroodi Trust, Mahmood Jafroodi,  
8 Azar Jafroodi, Jafroodi Properties, L.P., American Horticultural Supply, Inc., and any insider (as  
9 defined in Bankruptcy Code section 101(31)) of, or affiliate (as defined in Bankruptcy Code section  
10 101(2)) of, or an insider of an affiliate of 906 Eucalyptus Nursery, LLC, Jafroodi Trust, Mahmood  
11 Jafroodi, Azar Jafroodi, Jafroodi Properties, L.P., and American Horticultural Supply, Inc.

12 9. In addition, as further adequate protection, Debtor shall provide Lender with  
13 semiweekly reports no later than the February 23, 2015, and continuing every other following  
14 Monday, which contain a line-item by line-item comparison of budgeted to actual receipts of Cash  
15 Collateral and incurrence and payment of Approved Expenses for the prior two week period. By  
16 no later than the 16<sup>th</sup> of the month, the Debtor shall furnish to Lender a copy of the Monthly  
17 Operating Report that the Debtor is required to file with the Office of the United States Trustee.  
18 Within one business day of submitting its initial intake package to the Office of the United States  
19 Trustee, the Debtor shall furnish a copy of the initial intake package to Lender. Debtor shall  
20 provide Lender with borrowing base certificates on a semiweekly basis commencing on February  
21 23, 2015, and continuing every two weeks thereafter, in a form satisfactory to Lender that is signed  
22 and certified by an officer of the Debtor.

23 10. As additional adequate protection, the Debtor shall provide Lender with a 13 week  
24 budget for the period of May 16, 2015, through August 7, 2015, in the same format as the Budget,  
25 by no later than April 15, 2015.

26 Taxes & Insurance

27 11. The Debtor shall pay all postpetition taxes when they come due (including any and  
28 all property taxes, sales taxes, income taxes, use taxes, and any other taxes related to its operations),

1 maintain insurance as required by the Loan Documents, and comply with all other requirements of  
2 the Loan Documents that are necessary to preserve and maintain the value of Lender's liens and  
3 security interests. The Debtor shall timely pay sufficient partial lease payments to its landlord,  
4 Jafroodi Properties, L.P., to enable Jafroodi Properties, L.P. to pay the real property taxes associated  
5 with the real properties Debtor leases from Jafroodi Properties, L.P.

6 **Disposition of Collateral**

7 12. The Debtor shall not use, lease, sell or expend directly or indirectly the Prepetition  
8 Collateral or the Postpetition Collateral outside the ordinary course of its business without prior  
9 written consent of Lender.

10 13. Except otherwise agreed to in writing by Lender, during the term of this Stipulation,  
11 the Debtor shall be enjoined and prohibited from granting any security interests or liens, including  
12 liens created under section 364(d) of the Bankruptcy Code, which are senior to or on a parity with  
13 Lender's prepetition security interests or liens in the Prepetition Collateral and Postpetition  
14 Collateral.

15 **Inspection of Collateral**

16 14. On not less than forty-eight (48) hours' advance written notice, the Debtor shall,  
17 permit representatives, agents, and/or employees of Lender to visit, inspect, have reasonable access  
18 to, and consult with, as the case may be for the purpose of conducting Lender's field examinations,  
19 (i) the Debtor's books, records, and assets, (ii) the personnel of the Debtor who are familiar with  
20 the Debtor's assets, books and records or the information set forth therein, and (iii) such other  
21 information as Lender may reasonably request, and shall cooperate and consult with and provide  
22 to such representatives, agents, and/or employees all such information as they may reasonably  
23 request. Lender will use good faith to conduct these examinations.

24 **Automatic Perfection**

25 15. All agreements, security interests, and liens contemplated or granted by this  
26 Stipulation are effective and perfected as of the commencement of the reorganization case without  
27 further filing or recording by Lender in compliance with any state or federal law upon the entry of  
28 an order by the Bankruptcy Court approving this Stipulation. Lender will not be required to file

1 financing statements or other documents in any jurisdiction or take any other actions in order to  
2 perfect its security interests and liens granted under or pursuant to this Stipulation.

3 **Right to Challenge**

4 16a. Unless otherwise provided herein, the terms and conditions of this Stipulation  
5 relating to the liens and priorities granted to Lender herein shall be binding upon the Debtor, its  
6 creditors, all other parties-in-interest, and all successors in interest thereof including, without  
7 limitation, any statutory committee, and Chapter 11 trustee or examiner that may be appointed in  
8 the reorganization case or any trustee in a case under Chapter 7 of the Bankruptcy Code into which  
9 this reorganization case may be converted. This binding effect is an integral part of the agreement  
10 included in this Stipulation.

11 16b. Notwithstanding paragraph 16a, the Debtor, all other parties-in-interest, including,  
12 but not limited to, its creditors, and all successors in interest thereof including, without limitation  
13 any statutory committee, any Chapter 11 Trustee or Examiner that may be appointed in the  
14 reorganization case or any Trustee in a case under Chapter 7 of the Bankruptcy Code into which this  
15 reorganization case may be converted, shall have sixty (60) days from the date of the order of the  
16 Bankruptcy Court approving this Stipulation to bring any avoidance claims under Bankruptcy Code  
17 sections 544, 545, 547, 548, 549, 550, and similar provisions of the Bankruptcy Code as to Lender's  
18 liens, claims, and collateral. If the Debtor does not challenge the validity of the Loan Documents  
19 and the claims of Lender arising therefrom, Lender's security interest and lien on the Prepetition  
20 Collateral shall be deemed legal, valid, binding, perfected and otherwise unavoidable. The  
21 foregoing provision does not limit or impair the right of the Debtor to demand an accounting of all  
22 sums claimed due and owing by Lender, whether owing prepetition or postpetition. This provision  
23 is binding on all parties in interest and successors in interest including, without limitation, any  
24 statutory committee, any Chapter 11 Trustee or Examiner that may be appointed in the  
25 reorganization case or any Trustee in a case under Chapter 7 of the Bankruptcy Code into which this  
26 reorganization case may be converted.

27 ///

28 ///



Limited Waiver of Automatic Stay

17. The automatic stay presently in effect in this case pursuant to section 362 of the Bankruptcy code is hereby modified by the terms and conditions hereof, to effectuate the terms hereof and permit the adequate protection provisions in favor of Lender and the extent necessary to enable Lender to record the order entered by the Bankruptcy Court approving this Stipulation and any financing statements or related documents as Lender deems appropriate.

No Waiver/Reservation of Rights

18. The entry of an order approving this Stipulation shall not constitute, or be deemed to be, a waiver of any of Lender's rights or claims under the Loan Documents or applicable law, including, without limitation, the right to seek the payment of interest at the non-default and default rates, attorneys' fees and costs, and other fees and charges, or be deemed a cure of any default by the Debtor under the Loan Documents or applicable law, or be deemed a cure of any default by any other borrower or third party under the Loan Documents.

19. Except as otherwise set forth herein, Lender reserves all rights that it may have with respect to the Prepetition Collateral, Postpetition Collateral, and Cash Collateral in this Chapter 11 proceeding, including relief from the automatic stay for, among other things, lack of adequate protection. Lender expressly reserves all right to seek relief from or modification of the automatic stay, appointment of a trustee, dismissal or conversion of the case, or any other remedies that it may have.

20. This Stipulation shall not operate to modify, alter, impair, affect, abrogate, amend, restrict, or nullify the rights of Lender with respect to any person or entity other than the Debtor, nor release, alter impair, affect, or abrogate any debts, claims, demand, actions, and cause of action in law and equity, whether known or unknown, that Lender may have as to any person or entity other than the Debtor.

21. Nothing contained in this Stipulation shall require or be deemed to require Lender to make an additional loan or to extend further debt financing or other financial accommodations to or for the Debtor's benefit. Neither the Debtor nor any Trustee appointed in this case shall be

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1 allowed to surcharge Lender under section 506(c) of the Bankruptcy Code for any expenses incurred  
2 in the ordinary course of business.

3 **Modification and Amendment**

4 22. No waiver, modification, or amendment of any of the provisions hereof shall be  
5 effective unless it is set forth in writing, signed by the parties hereto and approved by the  
6 Bankruptcy Court, except the Debtor shall have the right to (i) use Cash Collateral for purposes not  
7 specified in the Budget as consented by Lender in writing, and (ii) conduct its business pursuant to  
8 the terms of this Stipulation after expiration of the Budget, if Lender consents to an additional  
9 budget in writing, without further order of the Court.

10 23. No subsequent stay, modification, termination, failure to extend the term of, or  
11 vacation of this Stipulation shall affect, limit, or modify any claim for the adequate protection or  
12 any superpriority claim granted hereunder, owed by the Debtor to Lender, incurred pursuant to this  
13 Stipulation or otherwise, nor shall any such stay, modification, or vacation limit, affect or modify  
14 the validity, enforceability, or perfection of any such security interest, lien, or priority granted or  
15 reaffirmed in connection therewith. The adequate protection cannot be subordinated, lose its  
16 superpriority status, or be deprived of the benefit of the liens granted to Lender hereunder by any  
17 subsequent order in this case.

18 **Survival**

19 24. In the event that the case is dismissed, converted, otherwise suspended, or  
20 substantively consolidated, neither the entry of an order approving this Stipulation nor the dismissal  
21 or conversion of this case shall affect the rights of Lender under its Loan Documents, or the terms  
22 and conditions of this Stipulation, including the security interests, liens and superpriority claims  
23 granted herein, and all the rights and remedies of Lender thereunder shall be and remain in full force  
24 and effect as if the case had not been filed or the case had not been dismissed, converted, suspended  
25 or substantively consolidated.

26 25. Notwithstanding any termination of the Debtor's authority to use the Cash Collateral  
27 pursuant to the terms hereof, all liens, priorities, rights and remedies provided to Lender in this  
28 Stipulation shall survive such termination and remain in full force and effect.

26. Notwithstanding any stay, modification, vacation, or reversal of this Stipulation, any indebtedness, obligation or liability incurred by the Debtor pursuant to this Stipulation arising prior to the later of the effective date of such stay, modification, vacation or reversal, or Lender's receipt of notice thereof, shall be governed in all respects by the original provisions of this Stipulation, and Lender shall continue to be entitled to all of the rights, remedies, privileges and benefits, including any payments authorized herein and all security interests, liens and priorities granted herein, with respect to all such indebtedness, obligations or liabilities incurred or existing prior to such date, and with respect to the Debtor's use of the Cash Collateral prior to such date. Without limiting the generality of the foregoing, in the event any court hereafter modifies any of the provision of this Stipulation, such modifications shall not affect the rights, remedies, liens, priorities, concessions, and waivers granted to Lender or acknowledged pursuant to this Stipulation with respect to any Cash Collateral which is used prior to any such modifications.

**Default / Termination**

27. Automatic Termination - Notwithstanding any other provision contained herein, Debtor's authorization to use Lender's Cash Collateral pursuant to this Stipulation shall terminate immediately and automatically, without any obligation of Lender to provide notice to the Debtor, upon the occurrence of any of the following Events of Default:

(a) Entry of an order converting the Debtor's Chapter 11 case to Chapter 7 of the Bankruptcy Code, which order is not stayed within fourteen (14) days of the entry thereof;

(b) Entry of an order dismissing the Chapter 11 case, which order is not stayed within fourteen (14) days of the entry thereof;

(c) Entry of an order by the Bankruptcy Court appointing a Chapter 11 trustee or examiner in the Debtor's bankruptcy case, which order is not stayed within fourteen (14) days of the entry thereof;

(d) Entry of an order granting Lender relief from the automatic stay;

(e) The filing of any motion by the Debtor to obtain senior or pari passu DIP financing without the consent of Lender;

(f) Failure of the Debtor to comply with any terms, conditions, or covenants



1. contained in this Stipulation or any senior or pari passu DIP financing; and

2. (g) The reversal, vacatur, stay, amendment, supplementation or other  
3. modification of this Stipulation (without Lender's consent) in a manner which shall, in the sole  
4. opinion of Lender, materially and adversely affect the rights of Lender hereunder, or shall materially  
5. and adversely affect the priority of any or all of Lender's collateral or security interests.

6. 28. Noticed Termination - Absent an agreement, in writing, between Lender and the  
7. Debtor, the Debtor's authorization to use Lender's Cash Collateral shall terminate automatically  
8. upon the end of the third calendar day after the mailing of notice of default from Lender, and failure  
9. to cure by the Debtor within such notice period, of the earliest to occur of any of the following  
10. Events of Default:

11. (a) Non-compliance by Debtor with any of the express terms or provisions of  
12. this Stipulation or any senior or pari passu DIP financing;

13. (b) Any person or entity obtains an order permitting the use of Lender's Cash  
14. Collateral without Lender's express written consent. For purposes of this subparagraph, Debtor  
15. agrees that it will not support any action which could result in expenditures materially different than  
16. as set forth in the Budget;

17. ///

18. (c) Debtor knowingly furnishes or knowingly makes any false, inaccurate or  
19. materially incomplete representation, warranty, certificate, report or summary in connection with  
20. or pursuant to his Stipulation.

21. 29. The date of termination upon any event as set forth in paragraphs 27 or 28 shall be  
22. referred to in this Stipulation as the "Termination Date."

23. **Rights and Remedies Upon Default**

24. 30. If the Debtor is in default of this Stipulation, Lender may file a motion with the  
25. Bankruptcy Court on an expedited basis on no less than three (3) days written notice to the Debtor  
26. seeking any such additional protection as it may reasonably require with respect to continued use  
27. of Cash Collateral by the debtor or otherwise, including, without limitation, modification or  
28. termination of this Stipulation. Nothing herein shall prevent the Debtor or other parties in interest

1 from opposing such a motion. Nothing contained herein shall or shall be deemed to constitute an  
2 admission by Lender that its interest in Prepetition Collateral or Postpetition Collateral is adequately  
3 protected within the meaning of section 361 of the Bankruptcy Code now or at some future time.  
4 Lender shall retain all its rights available pursuant to the Bankruptcy Code or any other applicable  
5 law, including its right to seek adequate protection and the Debtor shall retain all defenses and  
6 rights in response thereto.

7 31. Upon receipt from Lender of written notice that an Event of Default has occurred,  
8 the Debtor shall immediately cease using Cash Collateral, and shall segregate and hold any Cash  
9 Collateral in the Cash Collateral Account, or that it otherwise may have in its possession, in trust  
10 for the benefit of Lender. Such written notice shall be provided by Lender to the Debtor, to the  
11 Office of the United States Trustee, and to counsel for any official creditor committee appointed  
12 herein.

13 Extensions of Stipulation

14 32. In the event Lender consents to the extension(s) of the Debtor's authority to use Cash  
15 Collateral under this Stipulation, the Debtor and Lender shall file with this Court a stipulation which  
16 sets forth the terms of each such extension and which contains a budget of the expenses which the  
17 Debtor may incur and pay during such extension along with a proposed order. In the event that  
18 Lender does not consent to extend the Debtor's authority to use Cash Collateral under this  
19 Stipulation, the Debtor may bring a motion to seek authorization to continue using Cash Collateral,  
20 and such use shall be authorized only if the Bankruptcy Court, after notice and a hearing, authorizes  
21 the continued use of Cash Collateral in accordance with section 363(c)(2)(B) of the Bankruptcy  
22 Code; provided, however, that the liens, claims, rights, remedies, and protections granted to Lender  
23 under this Stipulation shall not be modified by any subsequent order of the Bankruptcy Court,  
24 unless Lender agrees otherwise.

25 Miscellaneous

26 33. Upon entry of an order approving this Stipulation, the provisions hereof shall be  
27 immediately binding upon and inure to the benefit of Lender, the Debtor and its respective  
28 successors and assigns, including any trustees or other fiduciary hereafter appointed in the Chapter

1 11. case or in any superseding Chapter 7 case as a legal representative of the Debtor or the Debtor's  
2 estate.

3 34. No rights are intended to be created hereunder for the benefit of any third party or  
4 creditor or any direct or indirect incidental beneficiary except as specifically provided herein.

5 35. Lender has entered into this Stipulation and consented to the use of the Cash  
6 Collateral in good faith and is entitled to all of the protections provided to such an entity.

7 36. All notices required to or permitted to be given to the Debtor under this Stipulation  
8 shall be addressed as follows:

9 Peter Susi  
10 [psusi@hbsb.com](mailto:psusi@hbsb.com)  
Jonathan Gura  
11 [jgura@hbsb.com](mailto:jgura@hbsb.com)  
Hollister & Brace  
12 1126 Santa Barbara Street  
Santa Barbara, CA 93102  
13 Telephone: (805) 896-0454; Facsimile: (805) 965-0329

14 All notices required to or permitted to be given to Lender under this Stipulation shall be  
15 addressed as follows:

16 René Lastreto II  
17 [rl2@lrplaw.net](mailto:rl2@lrplaw.net)  
Michael J. Gomez  
18 [mjg@lrplaw.net](mailto:mjg@lrplaw.net)  
Lang, Richert & Patch  
19 5200 North Palm Avenue, Fourth Floor  
Fresno, CA 93704  
20 Telephone: (559) 228-6700; Facsimile: (559) 228-6727

21 The above addresses may be changed effective upon receipt of a new address. Any notice required  
22 herein or permitted to be given shall be in writing and be personally served or sent by facsimile  
23 (upon confirmation of receipt) or United States mail and shall be deemed given when sent or, if  
24 mailed, when deposited in the United States mail so long as it is properly addressed. All notices  
25 and reports required hereunder shall also be sent to counsel for any official committee.

26 37. The Bankruptcy Court shall retain exclusive jurisdiction over the subject matter of  
27 this Stipulation in order to resolve any dispute in connection with the rights and duties specified  
28 hereunder.

1        38. The Debtor is authorized and directed to perform all acts and execute and comply  
2 with the terms of such other document, instruments and agreements necessary to effectuate the  
3 terms and conditions of this Stipulation.

4        39. If the Debtor or any other parties-in-interest, including but not limited to, their  
5 creditors or any statutory committee challenge the validity of the Loan Documents and the claims  
6 of the Lender arising therefrom, including the security interests and liens on the Prepetition  
7 Collateral, neither the Cash Collateral nor the proceeds from any sale, transfer, disposition or  
8 hypothecation of the Prepetition Collateral or Postpetition Collateral shall be used to fund the  
9 challenge.

10       40. Within two (2) calendar days of the execution of this Stipulation, notice of the terms  
11 of this Stipulation shall be served by the Debtor upon all required parties in accordance with Federal  
12 Rule of Bankruptcy Procedure 4001(d) and the Debtor shall file a motion with the Bankruptcy Court  
13 to approve the Stipulation with a final hearing, if necessary, to be held by no later than March 11,  
14 2015.

15       41. Any order approving this Stipulation shall be effective immediately upon its entry,  
16 and shall be effective nunc pro tunc to the Petition Date.

17       42. Except as otherwise expressly provided in this Stipulation, the terms and conditions  
18 of the Loan Documents shall remain in full force and effect and Lender shall have all of its rights  
19 and remedies thereunder, subject to the provisions of Bankruptcy Code and any orders of this Court.

20       43. This Stipulation may be executed in original, facsimile, or e-mail signature and in  
21 counterpart copies, and this Stipulation shall be deemed fully executed and effective when all  
22 parties have executed and possess a counterpart, even if no single counterpart contains all  
23 signatures.

1 IT IS SO STIPULATED:

2  
3 DATED: February 12, 2015

HOLLISTER & BRACE

4  
5 By: 

Peter Stusi

Jonathan Gura, Counsel for  
CLEARWATER NURSERY, INC.,  
Debtor and Debtor-in-Possession

6  
7  
8  
9 DATED: February 12, 2015

LANG, RICHERT & PATCH, P.C.

10  
11 By: 

Michael J. Gomez  
Attorneys for Secured Creditors  
FARM CREDIT WEST, FLCA and  
FARM CREDIT WEST, PCA